JUN 17 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

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INTRODUCTION

The appellee's motion to dismiss this appeal is based on three grounds, (1) that appellant has no standing, (2) that the controversy is not justiciable because the question raised is a "political question," and there is no nexus between appellant's claim and the constitutional issue raised, and (3) that the Supreme Court of Utah decided the case on adequate non-federal grounds.

ARGUMENT

I

PLAINTIFF HAS STANDING TO SUE

In *Flast v. Cohen*, 392 U.S. 83 (1968), this court pointed out the difference between standing to sue and justiciability. With respect to standing, the court said:

> Standing is an aspect of justiciability, and, as such, the problem of standing is surrounded by the same complexities and vagaries that inhere in justiciability. Standing has been called one of "the most amorphous [concepts] in the entire domain of public law."
>
> * * *
>
> Despite the complexities and uncertainties, some meaningful form can be given to the jurisdictional limitations placed on federal court power by the concept of standing. The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The "gist of the question of standing" is whether the parties seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the persons whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. Thus, a party may have standing in a particular case, but the federal court may nevertheless decline to pass on the merits of the case because, for example, it presents a political question. A proper

> party is demanded so that the federal courts will not be asked to decide "ill-defined controversies over constitutional issues," *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), or a case which is of "a hypothetical or abstract character."

Not only does the appellant have standing to bring this action, she is the only person who may do so. To argue otherwise is to disregard the nature of the award of child-support to one party or another in divorce proceedings. Although awards are made for the support of children, the decree operates directly in favor of a party to the divorce proceeding. The nature of a support award was pointed out by the Utah Supreme Court in *Anderson v. Anderson*, 110 Utah 300, 172 P.2d 132 (1946):

> Alimony relates to the support of the divorced wife, and support money relates to compensation to a spouse for the support of minor children.

Except in those instances in which a child has been denied the support to which it is entitled, the right to past-due support money is a right which exists in the spouse to whom the award was made. In *Larsen v. Larsen*, 5 Utah 2d 224, 300 P.2d 596 (1956), an action for past-due support, the Utah Supreme Court said:

> If the child has been the beneficiary of equivalent support and education so that the mother is entitled to receive all of said past due support money, she should be free to release, compromise or waive that which is hers.

See also *Hunt v. Monroe*, 32 Utah 428, 91 Pac. 269 (1907), wherein the court recognized that the award of support money and alimony was an award to

the wife, even though a decree directed payment to someone else, and that it was the wife who had the right to enforce the award.

II

THE CONSTITUTIONAL QUESTION RAISED BY APPELLANT IS JUSTICIABLE.

The appellee argues that not only is the appellant not a proper party, but there is not a sufficient nexus between the claim she asserts and the constitutional issue raised, and that therefore the action is non-justiciable. He also contends that the question is a "political question."

It seems difficult indeed to contend that there is no nexus between a party's claim for support money and a holding that she is not entitled to it because of a statute establishing the age of majority. Her entire right to the relief she claims is dependant upon the unconstitutionality of *15-2-1 Utah Code Annotated 1953*. If the statute is unconstitutional, she is entitled to the support money inasmuch as the common law is the general law of the State of Utah, *68-3-1 Utah Code Annotated 1953*, and at common law, both male and female children attain the age of majority at 21 years. *Jones v. Jones*, 72 F.2d 829, (D.C. Cir. 1934), and Annotation, "Age at which female attains majority," 95 A.L.R. 355.

If any more nexus is needed, it is found in Utah's Uniform Civil Liability for Support Act which places upon both parents an obligation to support their children, male and female, until they reach the age of 21 years. *Title 78, Chapter 45, Utah Code Annotated 1953.*

The "political question" argument is difficult to answer only because of its audacity. If this is a political question, what question of legislative classification is not? The present issue is far removed from what have generally been regarded as political questions. It is simply a case of a legislative classification which directly affects individual rights, among them the rights of the appellant to past-due support in this case.

III

THE RULING BELOW WAS NOT BASED ON NON-FEDERAL GROUNDS.

Even if the opinion of the Utah Supreme Court could be interpreted as deciding the case on the ground that a "political issue" was involved, it cannot be construed as deciding the question on a non-federal ground. The Utah Supreme Court did not rely on judicial restraint and refuse to decide the constitutional issue. It held that the statute was constitutional as against a direct attack based upon federal constitutional grounds. In its opinion the Utah Supreme Court said:

> The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1 U.C.A. 1953:
>
> > The period of minority extends in males to the age of 21 years and females to that of 18 years, but all minors obtain their majority by marriage.
>
> She contends that making age of majority lower for women than for men is discriminatory, and denies equal protection of the laws. (Citing Utah Constitution, Article 1, Sections 7 and 24; Article 4, Section 1; and also U.S. Constitution, Amendment Fourteen.)

> * * * it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with the constitutional provisions that it should be stricken down as invalid.

The court also ruled that the plaintiff is entitled to accrued support money for her son "during his minority," i.e., until he reaches the age of 21 years.

CONCLUSION

This was not a case in which the Utah Supreme Court declined to rule on the constitutionality of a Utah statute in the exercise of non-federal judicial restraint. The court held the statute to be constitutional, and not in violation of the Fourteenth Amendment.

The appellant here is not only a proper party, but is the only party having standing to bring this action. The constitutional issue is so closely related to her rights to obtain past-due support money that there is the needed nexus between the asserted rights and the constitutional issue.

As pointed out in the jurisdictional statement, there is a substantial federal question which should be decided by this court.

Respectfully submitted,

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